

Cynthia Z. Levin, Esq. (SBN 27050)
Law Offices of Todd M. Friedman, P.C.
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Phone: 866-598-5042
Fax: 866 633-0228
clevin@toddfllaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

STEWART SMITH; FRED	) Case No. 20-cv-2185 MMB
HEIDARPOUR, individually and on)
behalf of all others similarly situated,	) <u>CLASS ACTION</u>
Plaintiffs,	) FIRST AMENDED COMPLAINT
	) FOR VIOLATIONS OF:
vs.)
VISION SOLAR LLC, and DOES 1	) 1. NEGLIGENCE VIOLATIONS OF
through 10, inclusive, and each of them,	) THE TELEPHONE CONSUMER
Defendant.	) PROTECTION ACT [47 U.S.C.
	) §227(b)]
	) 2. WILLFUL VIOLATIONS OF THE
	) TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
	) §227(b)]
	) 3. NEGLIGENCE VIOLATIONS OF
	) THE TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
	) §227(c)]
	) 4. WILLFUL VIOLATIONS OF THE
	) TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
	) §227(c)]
	) <u>DEMAND FOR JURY TRIAL</u>

///

1 Plaintiffs STEWART SMITH and FRED HEIDARPOUR (hereinafter
2 referred to collectively as “Plaintiffs”), individually and on behalf of all others
3 similarly situated, allege the following upon information and belief based upon
4 personal knowledge:

5 **NATURE OF THE CASE**

6 1. Plaintiffs bring this action individually and on behalf of all others
7 similarly situated seeking damages and any other available legal or equitable
8 remedies resulting from the illegal actions of VISION SOLAR LLC
9 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on
10 Plaintiffs’ cellular telephone in violation of the Telephone Consumer Protection
11 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
12 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
15 Stewart Smith, a resident of Pennsylvania, and Plaintiff Fred Heidarpour, a resident
16 of California, seek relief on behalf of a Class, which will result in at least one class
17 member belonging to a different state than that of Defendant, a Pennsylvania
18 company. Plaintiffs also seek up to \$1,500.00 in damages for each call in violation
19 of the TCPA, which, when aggregated among a proposed class in the thousands,
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
21 diversity jurisdiction and the damages threshold under the Class Action Fairness
22 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Eastern
24 District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and because Defendant
25 does business within the State of Pennsylvania and Plaintiff Smith resides within
26 the County of Montgomery.

27 **PARTIES**

28 4. Plaintiff STEWART SMITH (hereinafter “SMITH”), is a natural

1 person residing in Montgomery County, Pennsylvania and is a “person” as defined
2 by 47 U.S.C. § 153 (39).

3 5. Plaintiff FRED HEIDARPOUR (hereinafter “HEIDARPOUR”), is a
4 natural person residing in Maricopa County, Arizona and is a “person” as defined
5 by 47 U.S.C. § 153 (39).

6 6. Defendant, VISION SOLAR LLC (“Defendant”) is a solar and
7 renewable energy company, and is a “person” as defined by 47 U.S.C. § 153 (39).

8 7. The above named Defendant, and its subsidiaries and agents, are
9 collectively referred to as “Defendants.” The true names and capacities of the
10 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
11 currently unknown to Plaintiffs, who therefore sues such Defendants by fictitious
12 names. Each of the Defendants designated herein as a DOE is legally responsible
13 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
14 the Complaint to reflect the true names and capacities of the DOE Defendants when
15 such identities become known.

16 8. Plaintiffs are informed and believe that at all relevant times, each and
17 every Defendant was acting as an agent and/or employee of each of the other
18 Defendants and was acting within the course and scope of said agency and/or
19 employment with the full knowledge and consent of each of the other Defendants.
20 Plaintiffs are informed and believes that each of the acts and/or omissions
21 complained of herein was made known to, and ratified by, each of the other
22 Defendants.

23 **FACTUAL ALLEGATIONS**

24 9. Beginning in or around September 2019, Defendant contacted SMITH
25 on SMITH’s cellular telephone number ending in -6860 in an attempt to solicit
26 Plaintiffs to purchase Defendant’s services.

27 10. Beginning in or around January 2020, Defendant contacted
28 HEIDARPOUR on HEIDARPOUR’s landline telephone number ending in -9503

1 in an attempt to solicit Plaintiffs to purchase Defendant's services.

2 11. Defendant used an "automatic telephone dialing system" as defined
3 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services.

4 12. Defendant contacted or attempted to contact SMITH from multiple
5 telephone numbers confirmed to belong to Defendant, including (267) 304-1405,
6 (856) 375-8129, (856) 203-2277, (818) 702-1899, and (856) 687-1801.

7 13. Defendant contacted or attempted to contact HEIDARPOUR from
8 multiple telephone numbers confirmed to belong to Defendant, including (856)
9 375-8129, (480) 524-1727, (856) 741-1211, and (480) 635-5630.

10 14. Defendant's calls to Plaintiffs constituted calls that were not for
11 emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12 15. During all relevant times, Defendant did not possess SMITH's "prior
13 express consent" to receive calls using an automatic telephone dialing system or an
14 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
15 227(b)(1)(A).

16 16. During all relevant times, Defendant did not possess
17 HEIDARPOUR's "prior express consent" to receive calls using an automatic
18 telephone dialing system or an artificial or prerecorded voice on his landline
19 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20 17. Further, SMITH's cellular telephone number ending in -6860 was
21 added to the National Do-Not-Call Registry on or about June 11, 2010.

22 18. HEIDARPOUR's landline telephone number ending in -9503 was
23 added to the National Do-Not-Call Registry on or about November 12, 2014.

24 19. Defendant placed multiple calls soliciting its business to SMITH on
25 his cellular telephone ending in -6860 beginning in or around September 2019.

26 20. Defendant placed multiple calls soliciting its business to
27 HEIDARPOUR on his landline telephone ending in -9503 beginning in or around
28 January 2020.

21. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

22. Plaintiffs received at least one solicitation call from Defendant within a 12-month period.

23. Defendant called Plaintiffs in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

24. Upon information and belief, and based on Plaintiffs' experiences of being called by Defendant after being on the National Do-Not-Call list for several years prior to Defendant's initial call, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

25. Plaintiffs brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

26. The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

27. The class concerning the National Do-Not-Call violation (hereafter "The DNC Class") is defined as follows:

1 All persons within the United States registered on the
2 National Do-Not-Call Registry for at least 30 days, who
3 had not granted Defendant prior express consent nor had
4 a prior established business relationship, who received
5 more than one call made by or on behalf of Defendant
6 that promoted Defendant's products or services, within
any twelve-month period, within four years prior to the
filing of the complaint.

7 28. SMITH represents, and is a member of, The ATDS Class, consisting
8 of all persons within the United States who received any solicitation telephone calls
9 from Defendant to said person's cellular telephone made through the use of any
10 automatic telephone dialing system or an artificial or prerecorded voice and such
11 person had not previously not provided their cellular telephone number to
12 Defendant within the four years prior to the filing of this Complaint.

13 29. Plaintiffs represent, and are members of, The DNC Class, consisting
14 of all persons within the United States registered on the National Do-Not-Call
15 Registry for at least 30 days, who had not granted Defendant prior express consent
16 nor had a prior established business relationship, who received more than one call
17 made by or on behalf of Defendant that promoted Defendant's products or services,
18 within any twelve-month period, within four years prior to the filing of the
19 complaint.

20 30. Defendant, its employees and agents are excluded from The Classes.
21 Plaintiffs do not know the number of members in The Classes, but believes the
22 Classes members number in the thousands, if not more. Thus, this matter should
23 be certified as a Class Action to assist in the expeditious litigation of the matter.

24 31. The Classes are so numerous that the individual joinder of all of its
25 members is impractical. While the exact number and identities of The Classes
26 members are unknown to Plaintiffs at this time and can only be ascertained through
27 appropriate discovery, Plaintiffs are informed and believes and thereon alleges that
28 The Classes includes thousands of members. Plaintiffs allege that The Classes

1 members may be ascertained by the records maintained by Defendant.

2 32. SMITH and members of The ATDS Class were harmed by the acts of
3 Defendant in at least the following ways: Defendant illegally contacted SMITH
4 and ATDS Class members via their cellular telephones thereby causing SMITH
5 and ATDS Class members to incur certain charges or reduced telephone time for
6 which SMITH and ATDS Class members had previously paid by having to retrieve
7 or administer messages left by Defendant during those illegal calls, and invading
8 the privacy of SMITH and ATDS Class members.

9 33. Common questions of fact and law exist as to all members of The
10 ATDS Class which predominate over any questions affecting only individual
11 members of The ATDS Class. These common legal and factual questions, which
12 do not vary between ATDS Class members, and which may be determined without
13 reference to the individual circumstances of any ATDS Class members, include,
14 but are not limited to, the following:

- 15 a. Whether, within the four years prior to the filing of this
16 Complaint, Defendant made any telemarketing/solicitation call
17 (other than a call made for emergency purposes or made with
18 the prior express consent of the called party) to a ATDS Class
19 member using any automatic telephone dialing system or any
20 artificial or prerecorded voice to any telephone number
21 assigned to a cellular telephone service;
- 22 b. Whether SMITH and the ATDS Class members were damaged
23 thereby, and the extent of damages for such violation; and
- 24 c. Whether Defendant should be enjoined from engaging in such
25 conduct in the future.

26 34. As a person that received numerous telemarketing/solicitation calls
27 from Defendant using an automatic telephone dialing system or an artificial or
28 prerecorded voice, without his prior express consent, SMITH is asserting claims

1 that are typical of The ATDS Class.

2 35. Plaintiffs and members of The DNC Class were harmed by the acts of
3 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
4 and DNC Class members via their telephones for solicitation purposes, thereby
5 invading the privacy of said Plaintiffs and the DNC Class members whose
6 telephone numbers were on the National Do-Not-Call Registry. Plaintiffs and the
7 DNC Class members were damaged thereby.

8 36. Common questions of fact and law exist as to all members of The
9 DNC Class which predominate over any questions affecting only individual
10 members of The DNC Class. These common legal and factual questions, which do
11 not vary between DNC Class members, and which may be determined without
12 reference to the individual circumstances of any DNC Class members, include, but
13 are not limited to, the following:

- 14 a. Whether, within the four years prior to the filing of this
15 Complaint, Defendant or its agents placed more than one
16 solicitation call to the members of the DNC Class whose
17 telephone numbers were on the National Do-Not-Call Registry
18 and who had not granted prior express consent to Defendant and
19 did not have an established business relationship with
20 Defendant;
- 21 b. Whether Defendant obtained prior express written consent to
22 place solicitation calls to Plaintiffs or the DNC Class members'
23 telephones;
- 24 c. Whether Plaintiffs and the DNC Class member were damaged
25 thereby, and the extent of damages for such violation; and
- 26 d. Whether Defendant and its agents should be enjoined from
27 engaging in such conduct in the future.

28 37. As persons that received numerous solicitation calls from Defendant

1 within a 12-month period, who had not granted Defendant prior express consent
2 and did not have an established business relationship with Defendant, Plaintiffs are
3 asserting claims that are typical of the DNC Class.

4 38. Plaintiffs will fairly and adequately protect the interests of the
5 members of The Classes. Plaintiffs have retained attorneys experienced in the
6 prosecution of class actions.

7 39. A class action is superior to other available methods of fair and
8 efficient adjudication of this controversy, since individual litigation of the claims
9 of all Classes members is impracticable. Even if every Classes member could
10 afford individual litigation, the court system could not. It would be unduly
11 burdensome to the courts in which individual litigation of numerous issues would
12 proceed. Individualized litigation would also present the potential for varying,
13 inconsistent, or contradictory judgments and would magnify the delay and expense
14 to all parties and to the court system resulting from multiple trials of the same
15 complex factual issues. By contrast, the conduct of this action as a class action
16 presents fewer management difficulties, conserves the resources of the parties and
17 of the court system, and protects the rights of each Classes member.

18 40. The prosecution of separate actions by individual Classes members
19 would create a risk of adjudications with respect to them that would, as a practical
20 matter, be dispositive of the interests of the other Classes members not parties to
21 such adjudications or that would substantially impair or impede the ability of such
22 non-party Class members to protect their interests.

23 41. Defendant has acted or refused to act in respects generally applicable
24 to The Classes, thereby making appropriate final and injunctive relief with regard
25 to the members of the Classes as a whole.

26 ///

27 ///

28 ///

1 ///
2

3 **FIRST CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227(b).**

6 **On Behalf of SMITH and the ATDS Class**

7 42. Plaintiffs repeats and incorporates by reference into this cause of
8 action the allegations set forth above.

9 43. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple negligent violations of the TCPA, including but not limited to each
11 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
12 *47 U.S.C. § 227 (b)(1)(A)*.

13 44. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
14 SMITH and the Class Members are entitled an award of \$500.00 in statutory
15 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

16 45. SMITH and the ATDS Class members are also entitled to and seek
17 injunctive relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection
20 Act**

21 **47 U.S.C. §227(b)**

22 **On Behalf of SMITH and the ATDS Class**

23 46. Plaintiffs repeats and incorporates by reference into this cause of
24 action the allegations set forth above.

25 47. The foregoing acts and omissions of Defendant constitute numerous
26 and multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
28 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

48. As a result of Defendant's knowing and/or willful violations of 47

1 *U.S.C. § 227(b)*, SMITH and the ATDS Class members are entitled an award of
 2 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
 3 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

4 49. SMITH and the Class members are also entitled to and seek injunctive
 5 relief prohibiting such conduct in the future.

6 **THIRD CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(c)**

9 **On Behalf of Plaintiffs and the DNC Class**

10 50. Plaintiffs repeats and incorporates by reference into this cause of
 11 action the allegations set forth above.

12 51. The foregoing acts and omissions of Defendant constitute numerous
 13 and multiple negligent violations of the TCPA, including but not limited to each
 14 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
 15 *47 U.S.C. § 227 (c)(5)*.

16 52. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
 17 Plaintiffs and the DNC Class Members are entitled an award of \$500.00 in statutory
 18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

19 53. Plaintiffs and the DNC Class members are also entitled to and seek
 20 injunctive relief prohibiting such conduct in the future.

21 **FOURTH CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection** 23 **Act**

24 **47 U.S.C. §227 et seq.**

25 **On Behalf of Plaintiffs and the DNC Class**

26 54. Plaintiffs repeat and incorporates by reference into this cause of action
 27 the allegations set forth above.

28 55. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
 2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
 3 in particular *47 U.S.C. § 227 (c)(5)*.

4 56. As a result of Defendant's knowing and/or willful violations of *47*
 5 *U.S.C. § 227(c)*, Plaintiffs and the DNC Class members are entitled an award of
 6 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
 7 *§ 227(c)(5)*.

8 57. Plaintiffs and the DNC Class members are also entitled to and seek
 9 injunctive relief prohibiting such conduct in the future.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs requests judgment against Defendant for the following:

- 12 A. Actual damages;
- 13 B. As a result of Defendant's negligent violations of *47 U.S.C.*
 14 *§227(b)(1)*, SMITH and the ATDS Class members are entitled
 15 to and request \$500 in statutory damages, for each and every
 16 violation, pursuant to *47 U.S.C. 227(b)(3)(B)*;
- 17 C. As a result of Defendant's willful and/or knowing violations of
 18 *47 U.S.C. §227(b)(1)*, SMITH and the ATDS Class members
 19 are entitled to and request treble damages, as provided by
 20 statute, up to \$1,500, for each and every violation, pursuant to
 21 *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*;
- 22 D. As a result of Defendant's negligent violations of *47 U.S.C.*
 23 *§227(c)(5)*, Plaintiffs and the DNC Class members are entitled
 24 to and request \$500 in statutory damages, for each and every
 25 violation, pursuant to *47 U.S.C. 227(c)(5)*;
- 26 E. As a result of Defendant's willful and/or knowing violations of
 27 *47 U.S.C. §227(c)(5)*, Plaintiffs and the DNC Class members
 28 are entitled to and request treble damages, as provided by

statute, up to \$1,500, for each and every violation, pursuant to
47 U.S.C. §227(c)(5); and,

F. Any and all other relief that the Court deems just and proper.

TRIAL BY JURY

58. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully submitted this 8th Day of May, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/Cynthia Z. Levin

Cynthia Z. Levin, Esq. (SBN 27050)
Law Offices of Todd M. Friedman, P.C.
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Phone: 866-598-5042
Attorneys for Plaintiffs STEWART SMITH
and FRED HEIDARPOUR

CERTIFICATE OF SERVICE

Filed electronically on May 8, 2020, with:

United States District Court CM/ECF system.

Notification sent electronically via the Court's ECF system on May 8, 2020, to:

Honorable Judge of the United States District Court
United States District Court
Eastern District of Pennsylvania

And all Counsel of Record as Recorded on the Electronic Service List.

This 8th day of May, 2020.

s/Cynthia Z. Levin
Cynthia Z. Levin